

7-140A112



ACF INDUSTRIES

INCORPORATED

750 THIRD AVENUE, NEW YORK, N. Y. 10017, (212) 986-8600, CABLE ADDRESS: ACFUSA

Postage \$10
100 Washington, D.C.

Registered Mail
Return Receipt Requested

May 17, 1977

Secretary
Interstate Commerce Commission
Washington, D.C. 20025

RECORDATION NO. 6390-A Filed & Recorded

MAY 20 1977 - 1 05 PM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

We enclose herewith for filing and recordation with the Commission, pursuant to Section 20c of the Interstate Commerce Act, as amended and the regulations thereunder, five original counterparts of the First Amendment, dated as of March 1, 1977, amending a certain Conditional Sale Agreement dated as of September 1, 1971 between ACF Industries, Incorporated and SHPX Fifth Corporation, and a certain Agreement and Assignment dated as of September 15, 1971 between ACF Industries, Incorporated and First National City Bank, Agent. The latter two instruments, together constituting one document, were recorded in your office on October 28, 1971 at 4:35 P.M., and were assigned Recordation No. 6390.

Set out below are the names and addresses of the parties to the recorded instruments amended by the enclosed:

| | |
|---------------------|---|
| Vendor: | ACF Industries, Incorporated 750 Third Avenue New York, New York 10017 |
| Assignee of Vendor: | Citibank, N.A. (formerly First National City Bank), Agent 399 Park Avenue New York, New York 10022 |
| Vendee: | SHPX Fifth Corporation 750 Third Avenue New York, New York 10017 |

The equipment covered by the enclosed document consists of the following:

| <u>Quantity</u> | <u>Type of Car</u> | <u>Mark and Number</u> |
|-----------------|--|---|
| 1,000 | 70-ton 50'6", 10'0" Sliding Door, 50,000# Fork Lift Truck Load - Rigid Underframe Box Car - Outside Post | PCA 166000 through 166999, both inclusive. All cars have marked on each side thereof the following legend: "FIRST NATIONAL CITY BANK (or "Citibank, N.A."), As Agent, Owner-Assignee" |

We also enclose our check to the order of the Commission in the sum of \$10.00, in payment of the recordation fee in this connection.

We request that three copies of the enclosed First Amendment, including the one marked "ACF Copy", bearing the Commission's recordation data, be returned to R. W. Montgomery, Assistant Secretary, ACF Industries, Incorporated, 750 Third Avenue, New York, N.Y. 10017.

Sincerely,



R. W. Montgomery
Assistant Secretary

rwm:ma
Enclosures

ACF INDUSTRIES
INCORPORATED

5/20/77

Interstate Commerce Commission
Washington, D.C. 20423

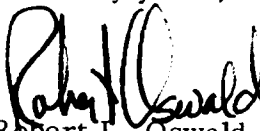
OFFICE OF THE SECRETARY

R.W. Montgomery
Assistant Secretary
ACF Industries, Incorp.
750 Third Street Ave.
New York, N.Y. 10017

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on **5/20/77** at **1:05pm**,
and assigned recordation number(s) **6390-A**

Sincerely yours,


Robert L. Oswald
Secretary

Enclosure(s)

SE-30
(5/76)

MAY 20 1977 - 1 05 PM

INTERSTATE COMMERCE COMMISSION
FIRST AMENDMENT

Dated as of March 1, 1977

This FIRST AMENDMENT (the "Amendment") among ACF INDUSTRIES, INCORPORATED ("ACF"), CITIBANK, N.A. (formerly FIRST NATIONAL CITY BANK) and BANKERS TRUST COMPANY (collectively the "Investors"; each individually an "Investor"), CITIBANK, N.A. as agent (the "Agent") for the Investors pursuant to the Finance Agreement referred to below and SHPX-FIFTH CORPORATION ("SHPX").

W I T N E S S E T H:

WHEREAS, ACF, the Investors and the Agent have entered into an Agreement, dated as of September 15, 1971 (the "Finance Agreement");

WHEREAS, ACF and SHPX have entered into a Conditional Sale Agreement, dated as of September 15, 1971 (the "CSA");

WHEREAS, ACF and the Agent have entered into an Agreement and Assignment, dated as of September 15, 1971 (the "Assignment");

WHEREAS, SHPX has executed an Assignment of Lease, dated as of September 15, 1971 (the "Lease Assignment") in favor of the Agent;

WHEREAS, pursuant to the terms of the Finance Agreement, the Agent has issued certain Interim Certificates of Interest (collectively the "Interim Certificates"; each individually an "Interim Certificate") and certain Final Certificates of Interest (collectively the "Final Certificates"; each individually a "Final Certificate") to the Investors;

NOW, THEREFORE; the parties hereto agree to amend the Finance Agreement, the CSA, the Interim Certificates and the Final Certificates as hereinafter set forth.

SECTION 1. Amendments to Finance Agreement. The Finance Agreement is, effective the date hereof and subject to the satisfaction of the conditions precedent set forth in Section 4 hereof, hereby amended by deleting the third paragraph of the first page thereof and substituting for such paragraph the following paragraph:

"As more fully set forth in Exhibit A hereto, the Conditional Sale Agreement is to provide, among other things, for the payment in installments, the first installment being payable on December 31, 1972, of the portion of the Purchase Price (as therein defined) of the Cars payable pursuant to subparagraph (c) of the third paragraph of Article 3 of the Conditional Sale Agreement (said portion of indebtedness under the Conditional Sale Agreement being hereinafter called

the "Conditional Sale Indebtedness"), together with interest on the outstanding Conditional Sale Indebtedness payable quarterly on the last day of March, June, September and December of each year, beginning December 31, 1971, at an interest rate equal to: (i) $1\frac{1}{2}$ of 1% per annum greater than the best rate of the Agent on 90-day loans to substantial and responsible commercial borrowers in effect from time to time from December 31, 1971 to and including March 31, 1977, (ii) the best rate of the Agent on 90-day loans to substantial and responsible commercial borrowers in effect from time to time from April 1, 1977 to and including December 31, 1979, and (iii) $1\frac{1}{4}$ of 1% per annum greater than the best rate of the Agent on 90-day loans to substantial and responsible commercial borrowers in effect from time to time thereafter; provided, that in no event shall such interest rate payable by the Purchaser be less than $5\frac{1}{2}\%$ per annum or in excess of $9\frac{1}{2}\%$ per annum from December 31, 1971 to and including December 31, 1978; and, further, provided, that each change in such interest rate is to become effective on the effective date of each change in such best rate announced by the Agent."

SECTION 2. Amendments to CSA. The CSA is, effective the date hereof and subject to the satisfaction of the conditions precedent set forth in Section 4 hereof, hereby amended by deleting the fourth paragraph of Article 3 therein and substituting for such paragraph the following paragraph:

"The first installment of the Conditional Sale Indebtedness shall be payable on December 31, 1972 in such amount, and subsequent installments shall be payable thereafter on December 31 of each year in such amounts, which, together with other payments or prepayments of the Conditional Sale Indebtedness made on or prior thereto (whether pursuant to Article 7 hereof or otherwise), shall cause the Conditional Sale Indebtedness outstanding on each date set forth

below to be equal to or (except for December 31, 1980) less than that amount equal to the percentage of the original Conditional Sale Indebtedness set forth opposite such date below:

| <u>Date</u> | <u>Percentage of the Original Conditional Sale Indebtedness</u> |
|------------------------|---|
| December 31, 1972..... | 89.3% |
| December 31, 1973..... | 78.6% |
| December 31, 1974..... | 67.8% |
| December 31, 1975..... | 57.2% |
| December 31, 1976..... | 46.5% |
| December 31, 1977..... | 35.8% |
| December 31, 1978..... | 24.3% |
| December 31, 1979..... | 12.8% |
| December 31, 1980..... | 0.0% |

The unpaid balance of the Conditional Sale Indebtedness in respect of a Group of Cars shall bear interest from the Closing Date in respect of which such Conditional Sale Indebtedness shall have been incurred at an interest rate equal to: (i) 1/2 of 1% per annum greater than the best rate (hereinafter called the 'Best Rate') of Citibank, N.A. on 90-day loans to responsible and substantial commercial borrowers in effect from time to time, from December 31, 1971 to and including March 31, 1977, (ii) the Best Rate from April 1, 1977 to and including December 31, 1979, and (iii) 1/4 of 1% per annum greater than the Best Rate thereafter; provided, that in no event shall such interest rate payable by the Purchaser be less than 5 1/2% per annum or the excess of 9 1/2% per annum from December 31, 1971 to and including December 31, 1978; and, further, provided, that each change in such interest rate is to take effect simultaneously with the corresponding change in the Best Rate announced by Citibank. Such interest shall be payable quarterly, to the extent accrued, on the last day of each March, June, September and December in each year, commencing December 31, 1971."

SECTION 3. Amendments to the Interim Certificates and the Final Certificates. Each Interim Certificate and each Final Certificate is, effective the date hereof and subject

to the satisfaction of the conditions precedent set forth in Section 4 hereof, hereby amended by deleting the final paragraph therein and substituting for such paragraph the following paragraph:

"Under the terms of the Conditional Sale Agreement, subject to the right of prepayment contained therein in the event of a Casualty Occurrence (as defined therein) and otherwise, (i) such principal amount is payable by the Purchaser in installments on December 31 in each year, commencing December 31, 1972, in such amounts as shall cause such principal amount outstanding on each date set forth below to be equal to or (except for December 31, 1980) less than that amount equal to the percentage of the original principal amount hereunder set forth opposite such date below:

| <u>Date</u> | <u>Percentage of the Original Principal Amount</u> |
|------------------------|--|
| December 31, 1972..... | 89.3% |
| December 31, 1973..... | 78.6% |
| December 31, 1974..... | 67.8% |
| December 31, 1975..... | 57.2% |
| December 31, 1976..... | 46.5% |
| December 31, 1977..... | 35.8% |
| December 31, 1978..... | 24.3% |
| December 31, 1979..... | 12.8% |
| December 31, 1980..... | 0.0% |

(ii) such principal amount bears interest payable by the Purchaser, quarterly on the last day of March, June, September and December in each year, commencing December 31, 1971, on the unpaid portion thereof from time to time outstanding from the date of this certificate until the same shall have become due and payable at an interest rate equal to: (i) 1/2 of 1% per annum greater than the best rate (hereinafter called the "Best Rate") of the Agent on 90-day loans to responsible and substantial commercial borrowers in effect from time to time, from December 31, 1971 to and including March 31, 1977, (ii) the Best Rate from April 1, 1977

to and including December 31, 1979, and (iii) 1/4 of 1% per annum greater than the Best Rate thereafter; provided, that in no event shall such interest rate be less than 5 1/2% per annum or in excess of 9 1/2% per annum from December 31, 1971 to and including December 31, 1978; and, further, provided, that each change in such interest rate to take effect simultaneously with the corresponding change in the Best Rate announced by the Agent, and (iv) all such principal and interest remaining unpaid after the same shall have become due and payable bears interest to the extent legally enforceable, at the rate of 10 1/2% per annum. All payments received by the Agent in accordance with the terms of the Conditional Sale Agreement shall be disbursed by the Agent in accordance with the terms and conditions of the Finance Agreement."

SECTION 4. Conditions of Effectiveness. This Amendment shall become effective when, and only when, on or before April 14, 1977 the Agent shall have received counterparts of this Amendment executed by all parties hereto; and Sections 1, 2 and 3 hereof shall become effective when, and only when, on or before April 14, 1977, the Agent shall have additionally received for the account of each Investor, a copy of each of the following, each document being dated the date of receipt thereof by the Agent (which date shall be the same for all such documents), in form and substance satisfactory to the Agent:

(a) A favorable opinion of Messrs. Hardy, Peal, Rawlings, Werner & Coogan, counsel to ACF, the statements contained in which shall be correct, to the effect that this Amendment has been duly authorized, executed and

delivered by ACF and confirming as of the date of such opinion the opinion of such counsel furnished on March 27, 1972 pursuant to Section 6(e) of the Assignment with all references therein to any agreement, instrument or the like to mean such agreement, instrument or the like as amended or modified by this Amendment.

(b) A favorable opinion of Messrs. Hardy, Peal, Rawlings, Werner & Coogan, counsel to SHPX, the statements contained in which shall be correct, to the effect that this Amendment has been duly authorized, executed and delivered by SHPX and confirming as of the date of such opinion the opinion of such counsel furnished on March 27, 1972 pursuant to Section 6(d) of the Assignment with all references therein to any agreement, instrument or the like to mean such agreement, instrument or the like as amended or modified by this Amendment.

SECTION 5. Upon the effectiveness of Sections 1, 2 and 3 hereof, on and after the date hereof:

(a) each reference in the Finance Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import, and each reference in the CSA, the Assignment, the Lease (as defined in the

Consent), the Lease Assignment and in any Interim Certificate or in any Final Certificate to the Finance Agreement, shall mean and be a reference to the Finance Agreement as amended and modified hereby;

(b) each reference in the CSA to "this Conditional Sale Agreement", "hereunder", "hereof", "herein", or words of like import, and each reference in the Finance Agreement, the Assignment, the Lease, the Lease Assignment and in any Interim Certificate or Final Certificate to the CSA, shall mean and be a reference to the CSA as amended and modified hereby;

(c) each reference in any Interim Certificate or in any Final Certificate to "this Certificate", "hereunder", "hereof", "herein" or words of like import, and each reference in the Finance Agreement, the CSA, the Assignment, the Lease, the Lease Assignment and any other Interim Certificate or Final Certificate to any Interim Certificate or in any Final Certificate shall mean and be a reference to any Interim Certificate or in any Final Certificate as amended and modified hereby.

SECTION 6. Except as specifically amended or modified above the Finance Agreement, the CSA, the Assignment, the Lease, the Lease Assignment and each Interim Certifi-

cate and Final Certificate shall remain in full force and effect and each is hereby ratified and confirmed.

SECTION 7. The execution, delivery and effectiveness of this Amendment shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Investor or the Agent under the Finance Agreement, the CSA, the Assignment, the Lease, the Lease Assignment and each Interim Certificate and Final Certificate, nor constitute a waiver of any provision of any of the Finance Agreement, the CSA, the Assignment, the Lease, the Lease Assignment and each Interim Certificate and Final Certificate.

SECTION 8. ACF agrees to pay on demand all costs and expenses of the Agent in connection with the preparation, reproduction, execution and delivery of this Amendment and the other instruments and documents to be delivered hereunder, including the reasonable fees and out-of-pocket expenses of Messrs. Shearman & Sterling, special counsel for the Agent, with respect thereto and of local counsel, if any, who may be retained by said special counsel with respect thereto. In addition, ACF shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution and delivery, filing or recording of this Amendment and the other

instruments and documents to be delivered hereunder, and agrees to save the Agent harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes or fees.

SECTION 9. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

SECTION 10. This Amendment shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 11. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized as of the date first above written.

CITIBANK, N.A. (formerly
FIRST NATIONAL CITY BANK)
as Investor and Agent

RM4
By *[Signature]*
Vice President

BANKERS TRUST COMPANY as
Investor

By Robert M. Byrnes
Title: Vice President

ACF INDUSTRIES, INCORPORATED

By Duan A. Burns
Title: VICE PRESIDENT

SHPX-FIFTH CORPORATION

By [Signature]
Title: VICE PRESIDENT

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before
me this 14th day of April, 1977, by
J. Bucholtz, a Vice President of Citibank, N.A.
Witness my hand and affixed seal.

Rosemary Ferguson
Notary
ROSEMARY FERGUSON
Notary Public, State of New York
No. 41-7074785
Qualified in Queens County
Commission Expires March 30, 1978

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before
me this 14th day of April, 1977, by Robert M. Bysshe
, a Vice President
of Bankers Trust Company.
Witness my hand and affixed seal.

Lawrence H. Cavanaugh
Notary
LAWRENCE H. CAVANAUGH
Notary Public, State of New York
No. 43-4515716
Qualified in Richmond County
Certificate filed in New York County
Commission Expires March 30, 1978

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before
me this 14th day of April , 1977, by

Ivan A. Burns , a Vice President
of ACF Industries, Incorporated.
Witness my hand and affixed seal.

Notary

Robert G. Pierce
ROBERT G. PIERCE
NOTARY PUBLIC, State of New York
No. 60-3100825
Qualified in Westchester County
Commission Expires March 30, 1979

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

The foregoing instrument was acknowledged before
me this 14th day of April , 1977, by

W. C. Anderson , a Vice President
of SHPX-Fifth Corporation.
Witness my hand and affixed seal.

Notary

Robert G. Pierce
ROBERT G. PIERCE
NOTARY PUBLIC, State of New York
No. 60-3100825
Qualified in Westchester County
Commission Expires March 30, 1979